Supreme Court, U. S.
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80-124

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES WADE,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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July 1980

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QUESTIONS PRESENTED

(1) Whether testimony elicited by the Government solely to prove that two of its principal witnesses had previously been convicted for participating in the same transaction in which Petitioner was charged rendered his trial fundamentally unfair and hence a denial of due process of law.

(2) Whether the Government's indiscriminate proof of unrelated criminal misconduct in which Petitioner was not involved rendered his trial fundamentally unfair and hence a denial of due process of law.

(3) Whether the perfunctory representation provided by Petitioner's trial counsel violated his Sixth Amendment right to the effective assistance of counsel.

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED FOR REVIEW	i
THE OPINION BELOW	2
JURISDICTION	2
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	9
CONCLUSION	14
APPENDIX:	
Opinion of the Court of Appeals	A-1
Judgment of the Court of Appeals	A-6
Order Denying Petition for Rehearing	A-7

TABLE OF AUTHORITIES

CASES

	Page
Freije v. United States, 386 F.2d 408 (1 Cir., 1967)	10
Leroy v. Canal Zone, 81 F.2d 914 (5 Cir., 1936)	9
United States v. Aldaco, 564 F.2d 706 (5 Cir., 1977)	10
United States v. Beechum, 582 F.2d 898 (5 Cir., 1978)	5
United States v. Bryza, 522 F.2d 414 (7 Cir., 1975)	10
United States v. Crosby, 294 F.2d 928 (2 Cir., 1961), *cert. denied sub nom. Mittleman v. United States*, 368 U.S. 984 (1962)	10
United States v. Fleetwood, 528 F.2d 528 (5 Cir., 1976)	10
United States v. Harrell, 436 F.2d 606 (5 Cir., 1970)	10, 12
United States v. Miranda, 593 F.2d 590 (5 Cir., 1979)	10
United States v. Newman, 490 F.2d 139 (3 Cir., 1974)	10
United States v. Wiesle, 542 F.2d 61 (8 Cir., 1976)	10
United States v. Wooldridge, 527 F.2d 1027 (5 Cir., 1978), *cert. denied*, 439 U.S. 848 (1978)	9

FEDERAL RULES OF EVIDENCE

Rule 404(b)	5, 8, 12
Rule 607	9, 10

No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

CHARLES WADE,
Petitioner,

versus

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioner Charles Wade respectfully prays that a writ of certiorari issue to review an opinion and judgment of the United States Court of Appeals for the Fifth Circuit, which affirmed without oral argument Petitioner's conviction under one count of an indictment alleging interstate transportation of a falsely made and forged security in violation of 18 U.S.C. section 2314 and 18 U.S.C. section 2.

THE OPINION BELOW

The opinion of the Court of Appeals is not reported and is reproduced as an Appendix to this petition at page A-1.

JURISDICTION

The opinion and judgment of the Court of Appeals were entered on May 5, 1980. A timely petition for rehearing was filed by Petitioner and overruled by the Court on June 3, 1980.

Petitioner invokes the Court's certiorari jurisdiction under 28 U.S.C. section 1254(1). Filing of this petition was accomplished within 60 days of the Court of Appeals' order overruling the petition for rehearing and was therefore timely under Rules 20.1 and 20.4 of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Petitioner's Federal constitutional claims are based upon the due process clause of the Fifth Amendment and the guarantee of effective assistance of counsel under the Sixth Amendment.

Title 18, United States Code, section 2314, provides in relevant part as follows:

> "Whoever, with unlawful or fraudulent intent, transports in interstate or foreign commerce any falsely made, forged, altered, or counterfeited securities or tax stamps, knowing the same to have been falsely made, forged, altered, or counterfeited;
> * * *
>
> "Shall be fined not more than $10,000 or imprisoned not more than ten years, or both."

Title 18, United States Code, section 2, provides as follows:

> "(a) Whoever commits an offense against the United States or aids, abets, counsels, commands, induces or procures its commission, is punishable as a principal.
>
> "(b) Whoever willfully causes an act to be done which if directly performed by him or another would be an offense against the United States, is punishable as a principal."

STATEMENT OF THE CASE

On May 16, 1979 a Federal grand jury in the Western District of Louisiana indicted Petitioner Charles Wade and his brother, Alex Melvin Wade, Jr., for alleged interstate tranpsortation of counterfeit securities. Counts I and II of the indictment charged that on two separate occasions Alex Wade, with unlawful and fraudulent intent, caused to be transported in interstate commerce between Texas and Louisiana three counterfeit cashier's checks. Count III alleged that on a subsequent occasion both Alex Wade and Petitioner Charles Wade, with unlawful and fraudulent intent, caused a fourth counterfeit cashier's check, drawn on the Indiana National Bank in the amount of $35,000.00 and payable to Van Trow Olds Cadillac, Inc., to be transported between Texas and Louisiana.

Both defendants pleaded not guilty. Prior to trial the District Court granted Petitioner's motion for severance and directed that he be tried separately under Count III because his brother had elected to forego representation by an attorney and to represent himself. Petitioner was represented at trial by court-appointed counsel.

The Government's two principal witnesses, James O. Cupples and Bruce Wayne Walker, initially were asked by the Government on direct examination whether they had previously been charged and convicted for their alleged participation in the transaction for which Petitioner was then on trial, and both were permitted to testify in the presence of the jury that they had been (Tr. 4-5; 21). In addition, Cupples admitted in response to the Government's questioning on direct examination that he had previously pleaded guilty in Houston to distributing hashish after being "busted for having six pounds of hash and other narcotics" (Tr. 4).

Cupples testified that he went to Petitioner Charles Wade's insurance office in Houston on April 30, 1979 after meeting Alex Wade in jail the preceding month (Tr. 6, 13). After telephoning Van Trow Olds Cadillac in Monroe, Louisiana and negotiating the purchase of two automobiles for $35,500.00, Alex Wade gave Cupples a cashier's check in that amount, a purchase order and $150.00 in cash so that Cupples could fly to Monroe with a second man, pick up the two automobiles and drive them back to Houston (Tr. 9). Petitioner, Cupples' girlfriend and an individual named Sylvester Brown were also present during this transaction (Tr. 5). When Cupples indicated he needed money for gas, Alex Wade obtained a credit card from Petitioner, who said "something like don't lose it, or whatever" (Tr. 7-8, 10), and gave it to Cupples. Alex Wade told Cupples to drop the cars off at the office (Tr. 13).

Both Cupples and Bruce Wayne Walker, a friend he had taken with him to drive back the other automobile, were arrested at the airport in Monroe, Louisiana the following afternoon (Tr. 8). At that time Cupples had

in his possession the cashier's check, the purchase order and the credit card (Tr. 10). Walker testified he saw these items for the first time in Shreveport, Louisiana, at which time Cupples told him he had obtained the credit card from Petitioner to buy gas for the cars (Tr. 21, 26).

Neither Cupples nor Walker testified that Petitioner participated in the transaction in any way other than by supplying the credit card. Indeed, Cupples *denied* having received any instructions from Petitioner in connection with the Louisiana trip (Tr. 13). Accordingly, the Government attempted to establish both Petitioner's active involvement in the offense and the requisite criminal intent by seeking to introduce evidence of unrelated criminal offenses in which both Petitioner and his brother were allegedly implicated. After hearing this evidence outside the presence of the jury, the District Court ruled it admissible under Rule 404(b) of the Federal Rules of Evidence[1] and the decision in *United States v. Beechum*, 582 F.2d 898 (5 Cir., 1978).[2] The defense objected to that ruling.

The evidence of these alleged "extrinsic offenses," as they related to Petitioner, was as follows:

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1. Rule 404(b) provides as follows:
"*Other crimes, wrongs, or acts.* Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show that he acted in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident."

2. In *Beechum* the Fifth Circuit construed Rule 404(b) to prescribe a two-step test. "First, it must be determined that the extrinsic offense evidence is relevant to an issue other than the defendant's character. Second, the evidence must possess probative value that is not substantially outweighed by its undue prejudice and must meet the other requirements of Rule 403." 582 F.2d at 911.

Cupples testified that Petitioner had given him four cashier's checks, each of which was made payable to Cupples; that Cupples had in turn given these checks to three other individuals (Karen Stoldt, Steve Henline and Kristi Jones), who then deposited the checks into their own accounts and returned all or a substantial portion of the proceeds thereof, which Cupples then gave either to Petitioner or to his brother Alex (Tr. 105-110). Cupples was subsequently advised by Stoldt, Henline and Jones that the checks had "bounced" (Tr. 111).

Bruce Wayne Walker testified that he was arrested in Houston on April 28, 1979 while attempting to purchase an automobile with another counterfeit cashier's check, and that Petitioner had called him on that date to determine whether the purchase had been made (Tr. 118-121).

Janice Edwards testified that Petitioner had given her a cashier's check, payable to her for deposit into her account, and that she had subsequently been advised the check was counterfeit (Tr. 150-55). A teller at the bank into which this check was deposited testified that the deposit had been made by an individual who resembled Petitioner, but she was unable to make a positive identification (Tr. 159).

Paul Mewis, an Assistant District Attorney in Houston, testified that Alex Wade had been tried in December 1978 for theft of an automobile by passing a counterfeit insurance draft (Tr. 191-93) and that Petitioner had been present during that portion of the trial in which an agent of the insurance company had testified that Alex Wade had no connection with the company (Tr. 194). Mewis also testified that he had discussed with Petitioner Alex Wade's lack of authority to issue cashier's checks (Tr. 195-97).

The Government then rested its case, and a defense motion for judgment of acquittal was denied (Tr. 204-06).[3]

The sole witness for the defense was Alex Wade, whose testimony was altogether incredible. Essentially Alex Wade testified that he was the owner of the Indiana National Bank; that he had become the owner of the bank through having attempted to make a deposit of $330 billion therein, which deposit he apparently claimed had been mishandled by the bank; that he had made and signed the $35,500.00 check that was the subject of Petitioner's indictment; that it was he, and not Petitioner, who had given the credit card to Cupples from a drawer in the office, and that the card had been issued in the name of Saratoga Enterprises, Inc. and signed on the back by Petitioner (Tr. 220-38).

Throughout the course of the trial Petitioner's counsel demonstrated a singular degree of ineptitude. Notwithstanding the Government's repeated utilization of leading questions to elicit damaging hearsay testimony from its witnesses, defense counsel objected only once—to the admission of the evidence of the alleged extrinsic offenses —and that objection was couched in the most general terms (Tr. 96). The cross-examination of prosecution witnesses was aimless and perfunctory. No requests for written witness statements were made under the Jencks Act. From the record it is apparent that counsel was

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3. At the conclusion of the Government's case the Petitioner personally addressed the Court and requested that he be provided with another court-appointed attorney. Among other grounds asserted in this request was that "she [Ms. Halsey] should have argued harder that this other [extrinsic offense] evidence not be admitted to the Court" (Tr. 212). The District Court ultimately denied this request.

totally unprepared to present a defense (Tr. 202-03). Most significantly, Petitioner's lawyer launched no objection against and made no effort to cure, through motion for mistrial, requests for cautionary instructions or otherwise, the devastating prejudice that resulted from the revelation during the first few moments of the Government's case that its principal witnesses had previously been found guilty of participating in the same transaction for which Petitioner was then on trial.

The jury convicted the Petitioner, and the District Court sentenced him to imprisonment for five years, with confinement in excess of six months suspended, followed by five years supervised probation.

The Court of Appeals affirmed the conviction without oral argument, rejecting among other contentions Petitioner's claims that the Government's utilization of evidence of unrelated criminal misconduct and of its principal witnesses' convictions for the same offense for which Petitioner was being tried had permitted the jury to infer guilt merely from the bad character of Petitioner's associates, and that the representation provided by Petitioner's counsel at trial had failed to satisfy the standards of the Sixth Amendment. The Court found all of the evidence admissible, either under Rule 404(b) of the Federal Rules of Evidence or, in the case of the testimony of Cupples and Walker concerning their own previous convictions for the same offense, under a "balancing" test in which "the question is whether prejudicial effect outweighs probative value." Significantly, however, in the latter instance the Court affirmed the admissibility of the evidence, *not* by weighing probative value against prejudice, but apparently by concluding that the evidence was admissible

for impeachment,[4] notwithstanding the fact that the credibility of Cupples and Walker was essential to the Government's case and had never at any time been attacked. A timely petition for rehearing, stressing that the Fifth Circuit had repeatedly held for more than 40 years that evidence of a co-defendant's conviction is not admissible, and was certainly not admissible as "impeachment" in the circumstances of this case, was overruled without opinion.

REASONS FOR GRANTING THE WRIT

Certiorari should be granted because the decision of the Court of Appeals represents an unwarranted departure from the consensus developed in all of the Circuits that evidence of a co-defendant's guilty plea or conviction is not admissible to prove the guilt of the accused. Moreover, the absence of definitive standards defining the circumstances under which evidence of so-called "extrinsic offenses" is admissible presents a recurring problem appropriate for resolution in this case.

At least since its decision in *Leroy v. Canal Zone*, 81 F.2d 914 (5 Cir., 1936), the Fifth Circuit has consistently held that "[w]here two or more persons have been jointly charged with the same criminal offense, but one

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4. In its opinion the Court of Appeals cites Rule 607 of the Federal Rules of Evidence (providing that "[t]he credibility of a witness may be attacked by any party, including the party calling him") and its decision in *United States v. Wooldridge*, 572 F.2d 1027, 1029 (5 Cir., 1978), *cert. denied*, 439 U.S. 849 (1978). In *Wooldridge*, however, the previous offenses to which the witness testified were unrelated to that for which the accused was on trial. In any event it can hardly be maintained persuasively in the circumstances of this case that the Government's purpose in eliciting the evidence was to attack the credibility of the witnesses, as opposed to stigmatizing the Petitioner by virtue of his association with them.

of them is separately tried after the others have been convicted, the judgment of conviction on that charge against the latter is not admissible in evidence against the one of those persons who is separately and subsequently tried on such charge. The previous conviction of others charged with the same criminal offense is not proof of [the defendant's] guilt of that offense" (citations omitted). See, *e.g., United States v. Aldaco,* 564 F.2d 706 (5 Cir., 1977); *United States v. Fleetwood,* 528 F.2d 528 (5 Cir., 1976); *United States v. Miranda,* 593 F.2d 590 (5 Cir., 1979); *United States v. Harrell,* 436 F.2d 606 (5 Cir., 1970). Other Circuits have likewise uniformly adhered to this principle.[5]

The Court of Appeals' attempt to salvage the conviction by denominating as "impeachment" the Government's preliminary questioning of Cupples and Walker concerning their previous convictions in the case is plainly insupportable. First, the testimony was obviously not elicited in an attempt to attack the credibility of the witnesses, the purpose authorized by Rule 607 of the Federal Rules of Evidence, but in order to establish that participants in the alleged criminal transaction had already been found guilty (implying, therefore, that the accused was likewise guilty). Secondly, while *unrelated* prior criminal convictions are admissible under Rule 609 of the Federal Rules of Evidence, that Rule clearly does not affect the established proposition that a previous con-

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5. *E.g., United States v. Crosby,* 294 F.2d 928, 948 (2 Cir., 1961), *cert. denied sub nom. Mittleman v. United States,* 368 U.S. 984 (1962); *United States v. Newman,* 490 F.2d 139, 143 (3 Cir., 1974); *United States v. Bryza,* 522 F.2d 414, 425 (7 Cir., 1975); *United States v. Wiesle,* 542 F.2d 61, 62 (8 Cir., 1976). See also *Freije v. United States,* 386 F.2d 408, 411 (1 Cir., 1967), and cases cited therein.

viction for the *same offense* for which the accused is being tried is not admissible. Third, whatever the status of such evidence when an appropriate cautionary instruction is given to the jury, the jury was given no such instruction in the present case, leaving it free to infer that the guilt of Cupples and Walker was some evidence of the guilt of the Petitioner. Fourth, the Court of Appeals' supposition that exclusion of the evidence "would assuredly have permitted destructive cross-examination by defense counsel" is singularly unpersuasive in view of the fact that no attempt to impeach or otherwise attack the credibility of the testimony of Cupples and Walker was ever made by the defense. It is hardly plausible to hypothesize in these circumstances that defense counsel would have brought out the convictions if the Government had not.

The error with respect to the evidence of the previous convictions of Cupples and Walker was particularly egregious in view of the Government's indiscriminate proof of unrelated criminal misconduct in which Petitioner was not involved. Both Cupples' prior conviction for distributing hashish and Alex Wade's previous conviction for theft had little if any bearing on the guilt of the Petitioner. The Government's ostensible theory that Alex Wade's conviction somehow demonstrated Petitioner's subsequent criminal intent is specious because the Government *still* failed to prove independently any involvement by Petitioner in the interstate transportation of the check. Supplying the credit card merely enabled Cupples to drive the automobiles back from Louisiana. It did nothing to promote or further the transportation of the cashier's check from Texas to Louisiana.

Indeed, in this regard, *every one* of the purported "extrinsic offenses" admitted against Petitioner was improperly utilized under the standards prescribed by Rule 404(b). The Government's position was that such unrelated "offenses," including specifically Petitioner's involvement with the six cashier's checks given to Cupples, Walker and Janice Edwards tended to establish Petitioner's criminal intent with respect to the transaction for which he was being tried (Tr. 88-96). But the Government utterly failed to prove through any of this evidence that the Petitioner had, on the unrelated occasions in question, committed any criminal offense. As in the transaction for which Petitioner was ultimately convicted, there was no evidence that on any of these other occasions Petitioner knew that the checks in question were counterfeit or that he acted with the criminal intent necessary to establish an offense. In short, the evidence was not admissible as proof of "extrinsic offenses" because the Government never established that the unrelated conduct was criminal. Notwithstanding that failure, the jury was left to infer, without evidence, that it was.

The absence of defense objection to the testimony of Cupples and Walker concerning their previous convictions in connection with the same transaction is immaterial for two reasons. First, in the circumstantial context of this case, the testimony was plain error, so devastatingly prejudicial that no objection was necessary. See *United States v. Harrell,* 436 F.2d 606 (5 Cir., 1970). This prejudice was particularly profound because of the utter absence of any cautionary instruction. Secondly, the performance of Petitioner's trial counsel was so abysmal that the failure to object must necessarily be characterized

as a deprivation of Petitioner's Sixth Amendment right to the effective assistance of counsel. No lawyer who stands idly by and allows her client to be buried by an avalanche of inadmissible, highly prejudicial evidence can properly be denominated as constitutionally adequate, particularly when her incompetence within the context of the entire trial is glaringly self-evident.

The Petitioner's trial was fundamentally unfair and hence a denial of his right to due process of law. The decision of the Court of Appeals in this case dangerously erodes the principle that a significant component of the accused's right to a fair trial is the right to be tried only on the charge contained in the indictment and not on the innuendo of previous misconduct by the defendant or by others with whom he has associated. Given the recurring nature of the problem, and its potential for significantly affecting the fairness of Federal criminal prosecutions in the Fifth Circuit, the decision below should be reviewed by this Court.

CONCLUSION

For all of the foregoing reasons, Petitioner Charles Wade respectfully suggests that his petition for the writ of certiorari should be granted.

Respectfully submitted,

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Counsel for Petitioner

APPENDIX

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-5567

Summary Calendar*

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

versus

CHARLES WADE,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

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(MAY 5, 1980)

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

Charles Wade was convicted by a jury of aiding and abetting the interstate transportation of a falsely made security in violation of 18 U.S.C. §§ 2 and 2314.[1] He

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* Fed. R. App. P. 34(a); 5th Cir. R. 18.

1. He was sentenced to serve five years; all but six months of the sentence was suspended, with five years probation.

attacks his conviction on four grounds. Finding none to have merit, we affirm.

To prove aiding and abetting, the government must establish both that a substantive offense was committed, United States v. Mason, 582 F.2d 961 (5th Cir. 1978), and that the defendant willfully participated in its commission, *see* United States v. Trevino, 556 F.2d 1265, 1269 (5th Cir. 1977) (citing Nye & Nissen v. United States, 336 U.S. 613, 619, 69 S.Ct. 776, 770, ____L.Ed. ____, ____ (1949)). Taking the evidence in the light most favorable to the government, as we now must, it sufficed to show that Charles Wade's brother, Alex, arranged by telephone from Houston, Texas, to purchase two Cadillacs in Monroe, Louisiana, with a counterfeit check for $35,000; Alex arranged for two accomplices to travel by plane to Monroe to receive the automobiles and instructed them to drive the automobiles back to Texas. Alex asked his brother, Charles, who is the defendant, for a credit card to give to one of the two assistants to use to pay for gasoline on the trip. Charles handed over the card to Alex who in turn handed it to the assistant; Charles told the recipient not to lose it.

To prove that Charles Wade had the requisite intent to aid and abet in the crime, the government offered testimony that Charles Wade had at an earlier date given one of the accomplices in the Cadillac transaction four cashier's checks, which were later learned to be counterfeit. We have recently set forth the criteria for admissibility of such evidence of other crimes, called extrinsic offenses, in United States v. Beechum, 582 F.2d 898, 910-911 (5th Cir. 1978) (en banc), *cert. denied,* ____ U.S.____, 99 S.Ct. 1244, ____L.Ed2d____ (1979). The

court must first determine that the extrinsic offense required the same intent as the crime charged, and, in addition, that the probative value of the evidence outweighed the inevitable prejudice to the defendant occasioned by testimony that he participated in other criminal conduct. We held that the weighing of probative value against prejudice is for the trial judge, reviewable if he exceeds the bounds of sound discretion. *Id.* at 915. *See also* United States v. Bloom, 538 F.2d 704, 709 (5th Cir. 1976), *cert. denied,* 429 U.S. 1074, 97 S.Ct. 814, ____L.Ed.2d____ (1977). It is evident that the extrinsic offense and the offense charged required the same intent. Whether the defendant, Charles Wade, intended to join in Alex's crime or was merely a spectator was the principal issue. The evidence was of significant force in demonstrating that he did. Obviously it bore the germs of prejudice. In weighing one against the other, the trial judge exercised his discretion prudently.

Before admitting the testimony about extrinsic offenses, the court gave a precautionary instruction to the jury. The court later repeated it before other testimony was given. However, four witnesses testified to these events and the judge did not preface each witness's testimony with it. Defense counsel made no such request, perhaps advisedly, for the too-often repeated admonition might have had the effect of emphasizing the testimony even more. In such circumstances, admonitions need not be given repeatedly. *See* United States v. Barnes, 586 F.2d 1052, 1059.

The argument is made that the instruction, as given, assumed an element of the crime of aiding and abetting, that Alex had committed the offense. Only by taking

one sentence from context can this conclusion be reached. The court specifically advised the jury that the government was required to prove that Alex had committed the crime. Taken as a whole, the court's instruction was not erroneous.

Two of the witnesses against Charles Wade testified to their own prior criminal records and that they met Alex Wade, who later appeared as a defense witness, while all were in jail. This, it is urged, influenced the jury to convict Charles Wade because of his association with people of bad character. Such evidence must be weighed in a balance similar to the one we have discussed: the question is whether prejudicial effect outweighs probative value. For the prosecutor to fail to elicit this testimony would have opened him to the charge of concealment. It would assuredly have permitted destructive cross-examination by defense counsel. Under the circumstances, the evidence was properly admitted, *See* Fed. R. Evid. 607; United States v. Wooldridge, 572 F.2d 1027, 1029 (5th Cir.), *cert. denied,* 439 U.S. 849, 99 S.Ct. 150, ____L.Ed.2d (1978).

The contention is made that the court failed to charge the jury that *willful* association with a criminal venture is necessary to prove aiding and abetting. Not only is it clear that the charge as a whole adequately conveyed the necessity of willfulness to the jury, but at one point the trial judge explicitly instructed the jury that in order to find the defendant guilty, it must find that he "willfully participated in the commission of this crime." Record at 330.

Finally, failing all else, the argument is made that defense counsel, originally retained by Charles Wade and

later appointed by the court because of his impecuniousness, was ineffective. The standard is not perfection but reasonable effectiveness. Friedman v. United States, 588 F.2d 1010, 1015 (5th Cir. 1979). The issue was raised at the trial. The experienced trial judge, who had observed the conduct of counsel, concluded that she had properly served her client. His conclusion is supported by the record.

For these reasons, the judgment is AFFIRMED.

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 79-5567
Summary Calendar

D. C. Docket No. CR-79-50006-02

UNITED STATES OF AMERICA,
Plaintiff-Appellee

versus

CHARLES WADE,
Defendant-Appellant.

Appeal from the United States District Court for the Western District of Louisiana

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Before GEE, RUBIN and RANDALL, Circuit Judges.

JUDGMENT

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was taken under submission by the Court upon the record and briefs on file pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

May 5, 1980

ISSUED AS MANDATE: 11 JUN 1980

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 79-5567

UNITED STATES OF AMERICA,
Plaintiff-Appellee

versus

CHARLES WADE,
Defendant-Appellant.

Appeal from the United States District Court for the
Western District of Louisiana

ON PETITION FOR REHEARING

(June 3, 1980)

Before GEE, RUBIN and RANDALL, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby DENIED.